CAPITOL OIL CORP.

IBLA 78-32 Decided January 26, 1978

Appeal from a decision of the California State Office, Bureau of Land Management rejecting a noncompetitive oil and gas lease offer for acquired lands. CA 4199.

Affirmed as modified.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Consent of Agency

   The Bureau of Land Management must reject a noncompetitive oil and gas lease offer for acquired lands under the jurisdiction of the Department of the Air Force where the latter agency withholds its consent from the issuance of a lease.

2. Federal Property and Administrative Services Act -- Mineral Leasing Act for Acquired Lands: Lands Subject to -- Oil and Gas Leases: Lands Subject to -- Surplus Property

   Lands acquired for military purposes and subsequently disposed of as surplus property under the Federal Property and Administrative Services Act with a reservation of mineral rights to the United States are not subject to leasing under the Mineral Leasing Act for Acquired Lands. Oil and gas leases on such land may issue only under the provisions of the Federal Property and Administrative Services Act, which requires competitive bidding.

APPEARANCES: Bill Anderson, Lands Department, Capitol Oil Corp., for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Capitol Oil Corp. appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated September 6, 1977, rejecting its noncompetitive oil and gas lease offer for acquired lands. The offer embraces all of sec. 31, T. 8 N., R. 3 E., Mount Diablo meridian, Yolo County, California, which was acquired for the Davis Communications Annex under the jurisdiction of the United States Air Force. In a letter dated June 7, 1977, the Air Force through the Base Civil Engineer of McClellan Air Force Base, withheld its consent to oil and gas exploration on the lands in question. BLM's decision rested on this ground. Notice of Appeal was received October 17, 1977.

Although both parties have treated sec. 31 as being under the jurisdiction of the Air Force, an examination of the record discloses that the W 1/2 of the section has been disposed of as surplus property under the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 484 (k)(2) (1977) (FPASA). That act permits the General Services Administration to assign surplus real property to the Secretary of the Interior (acting through the Bureau of Outdoor Recreation) for disposal to a State or its political subdivisions as a public park or recreation area. See 41 CFR 101-47.308-7 (1976). The instant record contains a quitclaim deed, dated July 13, 1973, so disposing of the W 1/2 of sec. 31 to Yolo County and reserving mineral rights to the United States.

Appellant's Statement of Reasons, filed November 11, 1977, does not address the Air Force's refusal to give its consent to oil and gas leasing. Rather, appellant concentrates on the collateral question of whether the land in question is desirable for leasing. Appellant does, however, call our attention to the quitclaim deed without elaborating on its significance.

[1] With respect to the E 1/2 of sec. 31, which is acquired land under the jurisdiction of the Air Force, BLM's rejection of appellant's lease offer is clearly justified. The Air Force's refusal to give consent to leasing conclusively interdicts issuing a lease. As restated by 43 CFR 3109.3-1 (1976), the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1977), requires consent of the agency having jurisdiction over the land:

> Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits, or holding a mortgage or deed of trust secured by such lands, and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for

the primary purpose for which they were acquired or are being administered.

Absent such consent, the Secretary of the Interior has no discretion to issue a lease. Charles F. Hajeck, 29 IBLA 330 (1977); Sallie B. Sanford, 24 IBLA 31 (1976), Frederick L. Smith, 21 IBLA 239 (1975); Susan D. Snyder, 9 IBLA 91 (1973); Thomas B. Cole, A-30444 (December 6, 1965).

[2] BLM's rejection of appellant's lease offer was also justified with respect to the W 1/2 of sec. 31, which was disposed of as surplus property under FPASA. Such surplus property may not be leased under the Mineral Leasing Act for Acquired Lands but only under the leasing provisions of FPASA. Although the Mineral Leasing Act for Acquired Lands excepts on its face only surplus lands pursuant to the Surplus Property Act of 1944, it has been held that since the 1944 act has largely been replaced by FPASA, the exception was equally applicable to the latter act. Paradox Oil & Gas Company, 22 IBLA 242 (1975); Elgin A. McKenna, Executrix, 74 I.D. 133 (1967), appeal dismissed sub nom. McKenna v. Udall, 418 F.2d 1171 (D.C. Cir. 1969). Leasing under FPASA is by competitive bidding. 40 U.S.C. § 484 (e)(1) (1969).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge